



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/688,817	10/17/2000	Ende Shan	196273US-0 CONT	2184

22850 7590 01/31/2003

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER

TOLEDO, FERNANDO L

ART UNIT	PAPER NUMBER
----------	--------------

2823

DATE MAILED: 01/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/688,817

Applicant(s)

SHAN, ET AL.

Examiner

Fernando Toledo

Art Unit

2823

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 December 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): Rejections under section 112 first paragraph.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached ADVISORY ACTION.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-24.

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

ADVISORY ACTION

Response to Amendment

1. Applicant's amendment will not be entered since it does not place the Application in better conditions for allowance.

Response to Arguments

2. Applicant's arguments filed 12/30/02 have been fully considered but they are not persuasive for the foregoing reasons.
3. Applicant contests that the deposition temperature of the seed layer of Xu teaches away from the claimed invention since it discloses it to be at 200°C or below. However, Xu discloses in column 24, lines 11 – 13 that the deposition temperature can be the one taught by Wang in the U. S. patent 5,108,570; which is from 50 to 250°C. Xu teaches another way, which refers to a situation where a reference teaches a preferred, a better or an alternative way to a claimed way of accomplishing something. A reference must be considered for all it teaches. *Ashland Oil Inc. v. Delta Resins & Refractories, Inc.*, 776 F .2d 281, 296, 227 USPQ 657, 666 (Fed. Cir. 1985). Preferred embodiments and disclosed examples do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. *Merck & Co. v. Biocraft Labs.*, 874 F2d 804, 807, 10 USPQ2d 1843, 1846 (Fed. Cir. 1989); *In re Mills*, 470 F .2d 649,650, 176 USPQ 196, 198 (CCPA 1972).
4. Applicant contests that the obviousness-type double patenting rejection is improper because the U. S. patent 6,140,228 does not form the seed layer on a Ti liner layer nor that the seed layer is formed at a temperature of 220-300°C.

5. Examiner respectfully submits that the seed layer of the U. S. patent 6,140,228 claims that the seed layer is formed on a liner/barrier layer (claim 1), claim 21 discloses that the liner/barrier layer "comprises a material selected from the group consisting of titanium, a titanium-tungsten alloy or titanium nitride." As for the temperature the '228 patent claims the range to be 300-420°C, which overlaps that of the present application.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fernando Toledo whose telephone number is 703-305-0567. The examiner can normally be reached on Mon-Fri 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Olik Chaudhuri can be reached on 703-306-2794. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7382 for regular communications and 703-308-7382 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

Fernando Toledo
Examiner
Art Unit 2823

ft
January 29, 2003


Olik Chaudhuri
Supervisory Patent Examiner
Technology Center 2800